



ILLNESS TO JUSTICE: CRIMINAL NEGLIGENCE AND MEDICAL MAL-PRACTICE

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ABSTRACT

Failure in context of medicinal pursuance can either make a life or take a life. With booming professional misconduct, it is jeopardizing the god-like status given to medical professionals and heading towards a massive annihilation of morality and ethics, and pure disregard to the medical oath. To uphold the integrity of the profession it is essential of stay true to the profession. In the midst of growing cases of medical negligence, people's cry for justice is getting louder. It is crucial to understand that medical law is a very sensitive spec in the array of law since it involves the subject of a life. In cases involving negligence medical records prove to be substantial evidence in deciding the acquittal or conviction of the medical practitioner. It is unnerving that despite knowing the proper documentation importance, the maintenance is still incipient. The doctor role is of paramount importance in every aspect and not just plans for treatment, operative records, or forms for consent but also medical history, physical examination, discharge records, referral papers, certificates of medical, and insurance. Medical record keeping is a much bigger talking point, which is still evolving; especially in India. This paper delves into the complexities of understanding a medical professional's role in the industry along with maintaining medical records and the responsibilities it follows, especially engaging in the criminal aspect of legal responsibility and unfolding the definitive perception of mal-practice. It is wise to recollect that, "poor record means poor defense, and no record means no defense."

KEYWORDS: Mal-Practice, Injustice, Evidence, Morality, Negligence.

INTRODUCTION

"In my opinion, our health care system has failed when a doctor fails to treat an illness that is treatable."

- Kevin Alan Lee

The term 'medical negligence,' which is now widely used in India, is not derived from Indian law; rather, it is a modern and traditional form of English Law. Medical Law is going through a major transformation. Physicians are no longer perfect and cannot answer inquiries. Physicians, in particular general practitioners, see their role as working in tandem with patients to ascertain what is in their best interests. Some claim that the connection between a doctor and a patient has evolved to resemble that between a customer and a supplier.^[1]

Actionable negligence is the negligence that adds or removes the responsibility of the perpetrator. To prove clinical negligence, it is necessary to prove that:

- The doctor has an 'obligation to take care' towards patient,
- The doctor failed to perform or has been in breach of the obligation; and
- The patient who suffered from the damages because of the duty breach.^[2]

If all three conditions are present at the same time, no clinical or medical negligence charge can be made.

"Fraud in science has a long history."^[3] Misconduct cases started to emerge in year of 1980 and became more frequent in the 1990s. According to experts, deception is "endemic in many scientific areas and most nations" nowadays."^[4,5] These figures are by far too low to represent the true prevalence of fraud, as many researchers acknowledged that they engage in a variety of unethical practices that go beyond fabrication, fraud, and

plagiarism, such as altering a study's results under pressure from a sponsor or presenting data that contradicts previous research.

Comments: One commentator has argued that a medical lawyer "needs to be a bit of a jack of all trades". In the past, medical decisions were seen as matters best left to the experts. Anyone who challenged a doctor's decision before the Court of Justice would have faced an uphill battle. However, in recent years, the relationship has changed somewhat. The courts seem to be a bit more tolerant of challenges to a doctor's decision.

Materials and Methods:

The information used in this article is a secondary form of data. This research partly follows the doctoral research method. Advancing towards being a mixed method. In this research, I've tried to discuss the results and judgments with people of respective fields and based on the same draw conclusions. This article expresses my approach towards the research subject.

RESULTS:

Criminal Liability under Medical Negligence

The Indian Supreme Court said that it is the duty of all physicians to practice with a reasonable standard of care and expertise.^[6] It was noted in the above case that criminal culpability is based on the degree of carelessness and the extent of injury sustained, while civil liability is based on the amount of compensation obtained. Nonetheless, in order to establish criminal culpability in any given situation, it is important to establish many components, such as the motivation behind the offense, the severity of the offense, and the characteristics of the perpetrator (s).

'Unless it can be shown that a doctor was careless or incompetent and that their actions were so reprehensible that they constituted a crime against the state, they could not be held criminally

accountable for the death of patient. If it could be shown which a doctor has been careless or incompetent and their actions were so reprehensible that they constituted a crime against the state, they cannot be held criminally accountable for the death of a patient.^[7]

DISCUSSION:

Medical Malpractice

Medical malpractice is defined as the wilful and deliberate carelessness of a licensed healthcare practitioner that causes injury to a patient by treating them differently than other healthcare providers with comparable training and experience.^[8]

This includes not taking the required action or not taking proper action.

The terminology used by the lawyers revolves around the question of whether the medical provider was negligent. Some of the examples of medical malpractice are given below.

- While doing surgery on a patient for a single organ, removing other significant organs from the body and selling them to generate revenue;
- Handling by non-professionals using fictitious official documentation;
- Birth injury and defects;
- Breast implant malpractice;
- Deliberate, dishonest, and reckless handling of situations in which the patient is protected by insurance.

How Medical Negligence Becomes Medical Malpractice

Medical negligence turns into medical malpractice when a doctor's intentional and wilful negligence inflicts unnecessary harm on a patient. In this single sentence, two additional legal terms are added to the definition of medical malpractice. Injury and Causation are the legal terms used to define malpractice of medical. It is when a medical professional were failed to meet the good medical practice standards within their practice field.

There is much discussion about the suitability of the global litigation system that oversees medical negligence.^[9,10] Experienced litigators are more likely to be settled when the key piece of evidence is at stake. Significant settlements were reached in numerous cases only because the doctors involved would have made poor witnesses; in other instances, an aggressive defence was present even when negligence was acknowledged in private; and in still other instances, the cases were pursued as part of a larger legal plan. These strategies are a standard component.^[11,12] Most of the studies that have attempted to quantify deterrence have shown conflicting results. In general, there isn't much factual data to back up using the negligence threshold to stop medical malpractice.

Medical Malpractice Liability in the Electronic Health Records Age

In today's healthcare, a wide range of electronic information technologies are used. Electronic access to clinical data, including patient demographics, lab and imaging findings, and patient interactions, is made possible by "basic" EHR systems. Certain systems also allow for the inclusion of physicians' notes.^[13,14,15]

The information included in EHRs may prove a provider's guilt in certain malpractice instances, but it may also support a defence in others. For example, a patient who had a disastrous surgical result in one instance sued his physician for carelessness.^[16] In most cases, this should make it easier for the defence to utilize the EHR in response to a malpractice claim; nonetheless, metadata might raise questions about document

forgery even in cases where there was no real misconduct if the record has been changed at the unsuitable time.

CONCLUSIONS:

In the light of information presented, it is clear that where there is practice there is mal-practice. And although eliminating it completely is a far-fetched goal as of now, identifying the problem and discerning it is very crucial. Use of modernization in inculcating a brighter future for medical laws holds paramount importance, and humbling the lifesavers to be rooted to their ethics. Ultimately justice leaves no cry unheard.

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